

drp

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.3635 OF 2015

Rameshwar Hiralal Vyas
Age – 60 years, Occ – Business,
R/o Dalfal, Shivajinagar
District – Jalgaon

PETITIONER

VERSUS

1. Kishore Narayan Bhusari
Age – 55 years, Occ- Business,
R/o 82, Baliram Peth, Jalgaon
District – Jalgaon
2. Shrikant Narayan Bhusari,
Age – 51 years, Occ- Advocate,
R/o 82, Baliram Peth, Jalgaon
District – Jalgaon
3. Suvarna Vilas Aghashe
Age – 46 years, Occ- Household,
R/o 82, Baliram Peth, Jalgaon
District – Jalgaon

RESPONDENTS

.....

Mr. S. S. Bora, Advocate for the petitioner
Mr. V. B. Patil, Advocate for respondents

.....

[CORAM : SUNIL P. DESHMUKH, J.]

DATE : 5th AUGUST, 2015

ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith and heard finally with consent of learned advocates for the parties.

2. The petitioner-defendant is before this court seeking indulgence to have appointment of commissioner as per his application at Exhibit-49 in Regular Civil Suit No. 122 of 2007.

3. Said suit has been filed by respondents seeking possession of the property as referred to in the plaint. The petitioner – defendant has contended that over the suit property, a farm house had been built and that was occupied by the defendant and converted into pulse mill godown. Since that may tantamount to a property amenable to Bombay Rent Control Act, it would reflect on the maintainability of the suit, since plaintiffs deny the existence, it would be necessary to appoint court commissioner, as prayed for.

4. The application had been opposed by the plaintiff – respondents pointing out that the application can be considered after completion of cross examination of witness, further referring to that earlier such attempt had failed.

5. The court, after considering that earlier attempt had failed under different circumstances, however, considered that it was open for the petitioner to make such an application.

6. The trial court has considered and placed reliance on

decisions reported in (2006) 4 Mh.L.J. 626 "*T. K. Krishnamurthy V. Tamil Nadu Water and Drainage Board*" as well as "(2001) 2 Mh.L.J. 969 "*Sanjay Namdeo Khadare V. Sahebrao Kachru Khandare*" applying analogy in the same, the court found it difficult to accede to the request as has been made under application Exhibit-49.

7. Learned judge rejected the same referring to that there are no specific pleadings in respect of construction and installation of machinery and machine room, for said purpose a commissioner cannot be allowed and moreover, that may tantamount to collection of evidence.

8. After hearing learned advocates for the petitioner as well as the respondents, it appears that the plaintiffs are open for an application after cross examination.

9. The order appears to be well reasoned and does not call for any interference.

10. Writ petition, as such, stands dismissed. Rule stands discharged.

[SUNIL P. DESHMUKH, J.]